

EXHIBIT 2

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2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE NORTHERN DISTRICT OF OHIO
4 EASTERN DIVISION

5 -----X

IN RE: NATIONAL PRESCRIPTION MDL No. 2804
6 OPIATE LITIGATION,

Case No. 17-MD-2804

7 This document relates to:

8 All Cases Hon. Dan A. Polster

9 -----X

10 * HIGHLY CONFIDENTIAL *

11 * SUBJECT TO FURTHER CONFIDENTIALITY REVIEW *

12 VIDEOTAPED DEPOSITION

13 OF

14 LACEY R. KELLER

15 New York, New York

16 Thursday, June 13, 2019

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Reported by:

24 ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA

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June 13, 2019

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9:10 a.m.

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HIGHLY CONFIDENTIAL - SUBJECT TO

9

FURTHER CONFIDENTIALITY REVIEW

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videotaped deposition of LACEY R.

11

KELLER, held at the offices of

12

KIRKLAND & ELLIS LLP, 601 Lexington

13

Avenue, New York, New York, pursuant to

14

Notice, before Annette Arlequin, a

15

Certified Court Reporter, a Registered

16

Professional Reporter, a Realtime

17

Systems Administrator, a Certified

18

Realtime Reporter, and a Notary Public

19

of the State of New York and New

20

Jersey.

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13 ALSO PRESENT:

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15 VINCE ROSICA, Golkow, Legal Video Specialist

16 DAN LAWLOR, Golkow, Legal Video Specialist

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IT IS HEREBY STIPULATED AND

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AGREED by and between the attorneys for

4

the respective parties herein, that

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filing and sealing be and the same are

6

hereby waived;

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IT IS FURTHER STIPULATED AND

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AGREED that all objections, except as

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to the form of the question, shall be

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reserved to the time of the trial;

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IT IS FURTHER STIPULATED AND

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AGREED that the within deposition may

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be sworn to and signed before any

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officer authorized to administer an

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oath, with the same force and effect as

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if signed and sworn to before the

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Court.

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THE VIDEOGRAPHER: We are now on

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the record. My name is Vince Rosica.

4

I'm a videographer for Golkow

5

Litigation Services.

6

Today's date is June 13, 2019,

7

and the time is 9:10 a.m.

8

This video deposition is being

9

held in New York, New York, in the

10

matter of National Prescription Opiate

11

Litigation, MDL No. 2804, for the

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United States District Court for the

13

Northern District of Ohio, Eastern

14

Division.

15

The deponent is Lacey Keller.

16

Counsel will be noted on the

17

stenographic record.

18

The court reporter is Annette

19

Arlequin and will now swear in the

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witness.

21

*

*

*

22

L A C E Y R. K E L L E R, called as a

23

witness, having been duly sworn by a

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Notary Public, was examined and

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testified as follows:

1

2

THE WITNESS: I do.

3

Lacey Rae Keller.

4

EXAMINATION BY

5

MS. LEVY:

6

Q. Good morning, Ms. Keller. My

7

name is Jenny Levy, and I'm an attorney

8

here at Kirkland & Ellis. I represent the

9

Allergan defendants in this case.

10

Thank you for being here today.

11

Apologies in advance for my scratchy voice

12

and sniffles. I'm feeling very under the

13

weather, so I will do my best to keep my

14

germs away from you.

15

Have you ever had your deposition

16

before?

17

A. Good morning, Jenny. Thanks for

18

having me. And no.

19

Q. This is the first deposition

20

experience you've ever had?

21

A. Correct.

22

Q. In the course of your work either

23

at the New York Attorney General's Office

24

or previously with SEIU, did you sit in on

25

any depositions or is this the first time

1

2

A. That is correct.

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A. That is correct.

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Q. And from a big picture level, if I understand your report correctly, what you have done is offer -- is do analyses offering 16 different metrics and illustrate what the results of those metrics would show at a high level.

Do you agree with me that that's what your report does?

A. Yes. I didn't actually count how many metrics, so I'm taking your word that there are 16.

Q. I will represent to you that I count 16. But what I'm trying to parse out, I don't mean to be mysterious, is I want to make sure that I understand the expertise you do intend to offer and the expertise you don't intend to offer.

1

2 labeler impact, in your own words, you
3 phrase it as a hypothetical, right?

4 A. Correct.

5 Q. You aren't suggesting -- the
6 defendant that's subject to the small
7 labeler impact is Janssen, correct?

8 A. Yes, I believe so.

9 Q. And what you do in that section
10 is you model, hypothetically, if Janssen
11 had looked at the data this way, then
12 hypothetically, orders could have been
13 stopped, right?

14 A. That is correct.

15 Q. But you do not go further in this
16 report to opine that Janssen had an
17 obligation to do that or should have done
18 that or that the DEA expected Janssen to do
19 that.

20 That's beyond your expertise,
21 right?

22 A. That is beyond, yes.

23 Q. Okay. And, also, you don't know
24 or you don't have the expertise to know --
25 you don't consider yourself an expert in

1

2 DEA reporting requirements, do you?

3 A. No.

4 Q. And you don't know what triggers
5 a reporting requirement for a manufacturer?

6 A. No.

7 Q. You don't know what triggers a
8 reporting requirement for a distributor, do
9 you?

10 A. No.

11 Q. And you don't know what triggers
12 reporting requirements for pharmacies?

13 A. No.

14 Q. It is beyond the scope of your
15 expertise to opine on what triggers a
16 reporting responsibility specifically?
17 That's beyond what you have been asked to
18 do here, correct?

19 A. Correct.

20 Q. And also just to make sure we
21 narrow in on what your opinions are, you
22 are not an expert in what DEA does with
23 suspicious reports? That is beyond your
24 expertise as well, right?

25 A. That is correct.

1

2 that it exists.

3 MS. LUCAS: I think Mr. Janush

4 knows about our -- Janssen's algorithm.

5 BY MS. LUCAS:

6 Q. So I wanted to talk about your
7 small labeler opinion.

8 And that applies only to Janssen,
9 correct?

10 A. That is correct.

11 Q. And why is that?

12 A. So small labeler, I don't mean
13 any offense to that because I understand
14 Johnson & Johnson is a very large company,
15 but when it comes to opioids, you have very
16 few as it pertains to the market share,
17 right? You're a much lower market share.

18 Q. Actually, if you want to turn
19 really quickly to page --

20 A. 16 you're probably looking for.

21 Q. I am.

22 Page 16, table 1 and table 2.

23 That reflects Janssen's market share in
24 Summit County and Cuyahoga County, correct?

25 A. Yes.

1

2

Q. And the largest percentage on

3

that table is 0.9 percent, and the smallest

4

one is 0.1 percent, correct?

5

A. That appears to be correct.

6

Q. Did you calculate those numbers?

7

A. I didn't do it by hand, but an

8

algorithm did.

9

Q. How did you do that?

10

A. SQL query.

11

Q. And you concluded that Janssen

12

had between 0.1 percent and 0.9 percent

13

market share in Summit and Cuyahoga,

14

correct?

15

A. Yes, depending on the metric and

16

depending on the county.

17

Q. And other manufacturers, either

18

defendants or otherwise not named in the

19

complaints, had between 99.1 and 99.9

20

percent of the market share, correct?

21

A. Yes. I'm assuming you're taking

22

the hundred minus yourselves and that's

23

everybody else, yes.

24

Q. So then back to your small

25

labeler opinion, why then did you conduct

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF WESTCHESTER)

I, ANNETTE ARLEQUIN, a Notary
Public within and for the State of New
York, do hereby certify:

That LACEY R. KELLER, whose
deposition is hereinbefore set forth,
was duly sworn by me, and that the
transcript of such depositions is a
true record of the testimony given by
such witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage; and that I
am in no way interested in the outcome
of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 14th day of June, 2019.


ANNETTE ARLEQUIN, CCR, RPR, CRR, RSA